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12 Attorneys for Defendant, Counterclaim
 13 Plaintiff and Third-Party Plaintiff Dexon
 Computer, Inc.

15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

18 CISCO SYSTEMS, INC., a Delaware
 corporation and CISCO TECHNOLOGY,
 19 INC., a California corporation,

20 Plaintiffs,

21 v.

22 DEXON COMPUTER, INC., a Minnesota
 corporation,

23 Defendant.

25 DEXON COMPUTER, INC., a Minnesota
 corporation,

27 Counterclaim Plaintiff and
 Defendant,

28 v.

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Case No. 3:20-CV-4926-CRB

**DEFENDANT'S SECOND AMENDED
 ANSWER, AFFIRMATIVE
 DEFENSES, COUNTERCLAIMS AND
 THIRD-PARTY CLAIMS**

Hon. Charles R. Breyer
 Presiding Judge

Trial Date: None

1 CISCO SYSTEMS, INC., a Delaware
2 corporation and CISCO TECHNOLOGY,
3 INC., a California corporation,

4 Counterclaim Defendants
and Plaintiffs.

5 DEXON COMPUTER, INC., a Minnesota
6 corporation,

7 Third-Party Plaintiff,

8 v.

9 ATLANTIX GLOBAL SYSTEMS
INTERNATIONAL, LLC, BIZCOM
10 ELECTRONICS, INC., DIGI DEVICES
ONLINE, ENTERPRISE BUSINESS
11 TECHNOLOGIES, INC., FIBER CABLE
CONNECTIONS, MJSI, MULTIMODE
12 TECHNOLOGIES, LLC, NETWORK
REPUBLIC, OPTIMUM DATA, INC.,
13 PARAGON, PURE FUTURE
TECHNOLOGY, INC., SEASTAR IT
14 TRADING LLC, SERVER TECH
SUPPLY, SOFTNETWORKS, INC.,
15 STRADA NETWORKS, LLC,
STRATEGIC TELECOM SUPPLY &
16 SOLUTIONS, TEKSAVERS,
UNLIMITED NETWORK SOLUTIONS,
17 and WISECOM TECHNOLOGIES,

18 Third-Party Defendants,

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1 Defendant Dexon Computer, Inc. (“Dexon”), by and through its undersigned
2 counsel, for its Answer, denies each and every allegation in Plaintiffs Cisco Systems, Inc.
3 and Cisco Technology Inc.’s (“Plaintiffs”) First Amended Complaint (“Complaint”) except
4 as expressly admitted, qualified or otherwise responded to herein and denies that Plaintiffs
5 are entitled to any of the relief requested in their Prayer for Relief. In response to each of
6 the numbered paragraphs of the Complaint, Dexon states as follows. To the extent the
7 headings or any other non-numbered statements in the Complaint contain allegations,
8 Dexon denies each and every such allegation.

INTRODUCTION

10 1. Dexon denies the allegations of paragraph 1 of the Complaint.

11 2. Dexon denies the allegations of paragraph 2 of the Complaint.

THE PARTIES

13 3. Dexon lacks sufficient information to admit or deny the allegations of paragraph 3 of
14 the Complaint, and on that basis Dexon denies those allegations.

15 4. Dexon admits the allegations of paragraph 4 of the Complaint.

16 5. Dexon denies the allegations of paragraph 5 of the Complaint.

JURISDICTION AND VENUE

18 6. Admits that the Complaint purports to be one “founded upon violations of Federal
19 trademark laws” but denies any such purported claims have legal or factual merit. The
20 remaining allegations in paragraph 6 of the Complaint are legal conclusions and questions
21 of law regarding jurisdiction to which no response is required. To the extent a response is
22 required, Dexon denies such allegations.

23 7. Dexon denies the allegations of paragraph 7 of the Complaint.

24 8. Dexon denies the allegations of paragraph 8 of the Complaint.

25 9. Dexon denies the allegations of paragraph 9 of the Complaint.

26 10. Dexon denies the allegations of paragraph 10 of the Complaint.

27 11. Dexon denies the allegations in paragraph 11 of the Complaint.

FACTUAL ALLEGATIONS

Alleged Cisco Business and History

12. Dexon lacks sufficient information to admit or deny the allegations of paragraph 12
 4 of the Complaint, and on that basis Dexon denies those allegations.

13. Dexon lacks sufficient information to admit or deny the allegations of paragraph 13
 6 of the Complaint, and on that basis Dexon denies those allegations.

14. Dexon lacks sufficient information to admit or deny the allegations of paragraph 14
 8 of the Complaint, and on that basis Dexon denies those allegations.

Alleged Cisco Trademarks

15. Dexon lacks sufficient information to admit or deny the allegations of paragraph 15
 11 of the Complaint, and on that basis Dexon denies those allegations.

16. Dexon lacks sufficient information to admit or deny the allegations of paragraph 16
 13 of the Complaint, and on that basis Dexon denies those allegations.

17. Dexon lacks sufficient information to admit or deny the allegations of paragraph 17
 15 of the Complaint, and on that basis Dexon denies those allegations.

18. Dexon lacks sufficient information to admit or deny the allegations of paragraph 18
 17 of the Complaint, and on that basis Dexon denies those allegations.

Alleged Counterfeit “Cisco” Products

19. Dexon lacks sufficient information to admit or deny the allegations of paragraph 19
 20 of the Complaint, and on that basis Dexon denies those allegations.

21. Dexon lacks sufficient information to admit or deny the allegations of paragraph 20
 22 of the Complaint, and on that basis Dexon denies those allegations.

**Alleged Impact on Health, Safety, and National Security Caused by
 Counterfeit Cisco Products**

25. Dexon lacks sufficient information to admit or deny the allegations of paragraph 21
 26 of the Complaint, and on that basis Dexon denies those allegations.

27. Dexon lacks sufficient information to admit or deny the allegations of paragraph 22
 28 of the Complaint, and on that basis Dexon denies those allegations.

1 **Dexon's Alleged History and Practice of Trafficking in Counterfeit Cisco**
 2 **Products**

3 23. Dexon admits selling product bearing the Cisco name and/or mark, but denies the
 4 remaining allegations of paragraph 23 of the Complaint, including, without limitation, any
 5 allegation such product was counterfeit.
 6 24. Dexon denies the allegations of paragraph 24 of the Complaint.
 7 25. Dexon denies the allegations of paragraph 25 of the Complaint.

8 **Alleged Activity Prior to 2015 Purportedly Demonstrating Dexon's Pattern**
 9 **and Practice of Knowingly Trafficking in Counterfeit Cisco Products**

10 **Alleged July 27, 2006 Sale of Counterfeit Cisco Products to a Cisco**
 11 **Investigator (Reston, Virginia)**

12 26. Dexon denies the allegations in paragraph 26 of the Complaint. Plaintiffs previously
 13 commenced a lawsuit against Dexon in 2011 including claims based directly on such
 14 allegations which were resolved via a confidential settlement agreement and dismissed with
 15 prejudice.

16 **FBI's Seizure of Alleged Counterfeit Cisco Products from Dexon on**
 17 **February 26, 2008**

18 27. Dexon admits the Federal Bureau of Investigation ("FBI") executed a search warrant
 19 at Dexon's business location on or about February 26, 2008, but denies the remaining
 20 allegations in paragraph 27 of the Complaint including, without limitation, any allegation,
 21 suggestion or implication any or "all" of the product taken by the FBI was determined to be
 22 counterfeit. Plaintiffs previously commenced a lawsuit against Dexon in 2011 including
 23 claims based directly on such allegations which were resolved via a confidential settlement
 24 agreement and dismissed with prejudice.

25 **Cisco's March 2008 Cease and Desist Letter to Dexon and its CEO**

26 28. Dexon admits Plaintiffs sent a letter addressed to Dexon's President and CEO Steve
 27 O'Neil on or about March 7, 2008, and that Dexon responded via a letter from its counsel
 28 on or about March 18, 2008, but Dexon denies the remainder of the allegations in paragraph
 29 28 of the Complaint, including, without limitation, Plaintiffs' attempted characterizations of

1 the letters or communications which speak for themselves. Plaintiffs previously commenced
 2 a lawsuit against Dexon in 2011 including claims based directly on such allegations which
 3 were resolved via a confidential settlement agreement and dismissed with prejudice.

4 **Dexon's June 2010 Sale of Alleged Counterfeit Cisco Products to
 5 WayneState University (Detroit, Michigan) and Cisco's C&D Letter**

6 29. Dexon admits selling and shipping Cisco product to Wayne State University on or
 7 about February 21, 2010 but denies the remainder of the allegations in paragraph 29 of the
 8 Complaint, including, without limitation, any allegation the product involved was
 9 counterfeit. Plaintiffs previously commenced a lawsuit against Dexon in 2011 including
 10 claims based directly on such allegations which were resolved via a confidential settlement
 11 agreement and dismissed with prejudice.

12 30. Dexon admits Plaintiffs sent a letter addressed to Dexon's President and CEO Steve
 13 O'Neil on or about August 6, 2010 concerning Dexon's sale of Cisco product to Wayne
 14 State University, but Dexon denies the reminder of the allegations in paragraph 30 of the
 15 Complaint, including, without limitation, Plaintiffs' attempted characterization of the letter
 16 which speaks for itself. Plaintiffs previously commenced a lawsuit against Dexon in 2011
 17 including claims based directly on such allegations which were resolved via a confidential
 18 settlement agreement and dismissed with prejudice.

19 31. Dexon admits it responded via a letter from counsel to Plaintiff's Wayne State
 20 University allegations on or about August 23, 2010, but Dexon denies the reminder of the
 21 allegations in paragraph 31 of the Complaint, including, without limitation, Plaintiffs'
 22 attempted characterization of the letter which speaks for itself. Plaintiffs previously
 23 commenced a lawsuit against Dexon in 2011 including claims based directly on such
 24 allegations which were resolved via a confidential settlement agreement and dismissed with
 25 prejudice.

26 32. Dexon admits Plaintiffs sent a follow-up letter concerning or relating to the Wayne
 27 State University allegations on or about August 30, 2010, but Dexon denies the reminder of
 28 the allegations in paragraph 32 of the Complaint, including, without limitation, Plaintiffs'

1 attempted characterization of the letter which speaks for itself. Plaintiffs previously
 2 commenced a lawsuit against Dexon in 2011 including claims based directly on such
 3 allegations which were resolved via a confidential settlement agreement and dismissed with
 4 prejudice.

5 **Dexon's July 2010 Sale of Alleged Counterfeit Cisco Products to a Cisco
 6 Investigator (Los Angeles, California)**

7 33. Dexon denies the allegations in paragraph 33 of the Complaint. Plaintiffs previously
 8 commenced a lawsuit against Dexon in 2011 including claims based directly on such
 9 allegations which were resolved via a confidential settlement agreement and dismissed with
 10 prejudice.

11 **Dexon's Alleged Illegal Conduct Giving Rise to the Present Lawsuit**

12 34. Dexon denies the allegations in paragraph 34 of the Complaint.

13 **Dexon's July 2015 Sale of Alleged Counterfeit Cisco Product to Things
 14 Remembered, Inc. (Highland Heights, Ohio) and Cisco's C&D Letter**

15 35. Dexon admits selling Cisco product to Things Remembered, Inc. on or about July
 16 2015, but denies the remainder of the allegations in paragraph 35 of the Complaint, including
 17 any allegation the product was counterfeit.

18 36. Dexon admits Plaintiffs sent a letter addressed to Dexon's counsel relating to the
 19 Things Remembered, Inc. allegations on or about August 27, 2020 and that Dexon
 20 responded thereto, but Dexon denies the remainder of the allegations in paragraph 36 of the
 21 Complaint, including, without limitation, Plaintiffs' attempted characterizations of the
 22 letters or communications which speak for themselves.

23 **Dexon's December 2016 Sale of Alleged Counterfeit Cisco Products to
 24 Jack Henry & Associates, Inc. (Monett, Missouri) and Cisco's C&D
 25 Letter**

26 37. Dexon admits selling Cisco product to Jack Henry & Associates, Inc. ("Jack Henry")
 27 on or about December 2016, but denies the remainder of the allegations in paragraph 37 of
 28 the Complaint, including, without limitation, any allegation the product was counterfeit.

1 38. Dexon admits Plaintiffs sent a letter addressed to Dexon's counsel relating to the Jack
 2 Henry allegations, but Dexon denies the remainder of the allegations in paragraph 38 of the
 3 Complaint, including, without limitation, Plaintiffs' attempted characterization of the letter
 4 which speaks for itself.

5 39. Dexon admits it responded to Plaintiffs' Jack Henry allegations via a letter from
 6 Dexon's counsel, but denies the remainder of the allegations in paragraph 39 of the
 7 Complaint, including, without limitation, Plaintiffs' attempted characterizations of the
 8 responsive letter which speaks for itself.

9 **Dexon's October 2017 Sale of Alleged Counterfeit Cisco Products to a
 10 Cisco Investigator (Berkeley, California)**

11 40. Dexon denies the allegations in paragraph 40 of the Complaint.

12 **Dexon's January 2018 Sale of Alleged Counterfeit Cisco Product to
 13 Community Health Alliance (Reno, Nevada) and Cisco's C&D Letter**

14 41. Dexon admits selling Cisco product to Community Health Alliance ("CHA") on or
 15 about January 2018, but denies the remainder of the allegations in paragraph 41 of the
 16 Complaint, including, without limitation, any allegation the product was counterfeit.

17 42. Dexon admits Plaintiffs and Dexon's counsel exchanged a series of letters or
 18 communications relating to the CHA allegations, but denies the remainder of the allegations
 19 in paragraph 42 of the Complaint, including, without limitation, Plaintiffs' attempted
 20 characterizations of the letters or communications which speak for themselves.

21 **Dexon's April 2018 Sale of Alleged Counterfeit Cisco Products to
 22 Tucson Medical Center (Arizona)**

23 43. Dexon admits selling Cisco product to Tucson Medical Center ("TMC") on or about
 24 April 2018, but denies the remainder of the allegations in paragraph 43 of the Complaint,
 25 including, without limitation, any allegation the product was counterfeit.

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1 **Dexon's April 2018 Sale of Alleged Counterfeit Cisco Products to**
 2 **DARCARS (Maryland) and Cisco's C&D Letter**

3 44. Dexon admits selling Cisco product to DARCARS on or about April 2018, but denies
 4 the remainder of the allegations in paragraph 44 of the Complaint, including, without
 5 limitation, any allegation the product was counterfeit.

6 45. Dexon admits Plaintiffs sent a letter addressed to Dexon's counsel relating to the
 7 DARCARS allegations, but Dexon denies the reminder of the allegations in paragraph 45 of
 8 the Complaint, including, without limitation, Plaintiffs' attempted characterization of the
 9 letter which speaks for itself.

10 **Dexon's August 2018 Sale of Alleged Counterfeit Cisco Products to**
 11 **Lockridge, Grindal, Nauen, PLLP (Minneapolis, Minnesota)**

12 46. Dexon admits selling Cisco product to Lockridge, Grindal, Nauen, PLLP on or about
 13 August 2018, but denies the remainder of the allegations in paragraph 46 of the Complaint,
 14 including, without limitation, any allegation the product was counterfeit.

15 **Dexon's August 2018 Sale of Alleged Counterfeit Cisco Products to**
 16 **Regional Justice Information Service (St. Louis, MO) and Cisco's C&D**
 Letter

17 47. Dexon admits selling Cisco product to Regional Justice Information Service ("RJIS")
 18 on or about August 2018, but denies the remainder of the allegations in paragraph 47 of the
 19 Complaint, including, without limitation, any allegation the product was counterfeit.

20 48. Dexon admits Plaintiffs sent a letter addressed to Dexon's counsel relating to the RJIS
 21 allegations, but Dexon denies the reminder of the allegations in paragraph 48 of the
 22 Complaint, including, without limitation, Plaintiffs' attempted characterization of the letter
 23 which speaks for itself.

24 **Dexon's Purchases in 2018 of Alleged Counterfeit Switches from**
 25 **PureFutureTech (Fremont, California)**

26 49. Dexon admits purchasing Cisco product from PureFutureTech on or about 2018 and
 27 that the purported supplier of such product was HongKong Sells, a former authorized
 28 licensed seller of Cisco products, but lacks sufficient information to admit or deny the

1 remaining allegations of paragraph 49 of the Complaint, and on that basis Dexon denies such
2 allegations.

3 50. Dexon admits Plaintiffs served it with a subpoena relating to a lawsuit involving
4 Plaintiffs, PureFutureTech and HongKong Sells and that Plaintiffs were ultimately required
5 to file a motion relating to such non-party subpoena. Dexon denies the remaining allegations
6 of paragraph 50 of the Complaint, including, without limitation, any allegation, suggestion
7 or implication Dexon “refused to cooperate” with, or in any way failed to meet its obligations
8 arising from, the subpoena.

Dexon's Purchases in 2017 to 2019 of Alleged Counterfeit Transceivers from Pure Future Tech, Inc. (Fremont, California)

11 51. Dexon admits purchasing Cisco product from Pure Future Tech, Inc. in the period
12 2017-2019 but denies any such product was counterfeit. Dexon lacks sufficient information
13 to admit or deny the remaining allegations in paragraph 51 of the Complaint and on that
14 basis denies such allegations.

15 52. Dexon denies the allegations in paragraph 52 of the Complaint, including, without
16 limitation, any allegation Dexon knew or reasonably should have known any Cisco product
17 was allegedly counterfeit, or that Dexon was willfully blind to such alleged fact.

Dexon's Sales of Alleged Counterfeit Products to Murray State University (Murray, Kentucky) in 2018 and 2019 and Cisco's C& Letter

20 53. Dexon admits selling Cisco product to Murray State University (“MSU”) in or about
21 2018 and 2019, but denies the remainder of the allegations in paragraph 53 of the Complaint,
22 including, without limitation, any allegation the product was counterfeit.

23 54. Dexon admits Plaintiffs sent a letter addressed to Dexon's counsel relating to the
24 MSU allegations, but Dexon denies the remainder of the allegations in paragraph 54 of the
25 Complaint, including, without limitation, Plaintiffs' attempted characterization of the letter
26 which speaks for itself.

1 **Dexon's July 2019 Sale of Alleged Counterfeit Cisco Products to**
 2 **MedRisk (King of Prussia, Pennsylvania)**

3 55. Dexon admits selling Cisco product to MedRisk on or about July 2019, but denies
 4 the remainder of the allegations in paragraph 55 of the Complaint, including, without
 5 limitation, any allegation the product was counterfeit.

6 **Dexon's September 2019 Sale of Alleged Counterfeit Cisco Products to**
 7 **Coppell Independent School District (Coppell, Texas) and Cisco's C&D**
 Letter

8 56. Dexon admits selling Cisco product to Coppell Independent School District ("CISD")
 9 on or about September 2019, but denies the remainder of the allegations in paragraph 56 of
 10 the Complaint.

11 57. Dexon denies any allegation, suggestion or implication in paragraph 57 of the
 12 Complaint that Cisco product it sold to CISD was counterfeit. Dexon lacks sufficient
 13 information to admit or deny the remainder of the allegations in paragraph 57 of the
 14 Complaint and on that basis denies such allegations.

15 58. Dexon admits Plaintiffs sent a letter addressed to Dexon's counsel relating to the
 16 CISD allegations, but Dexon denies the reminder of the allegations in paragraph 58 of the
 17 Complaint, including, without limitation, Plaintiffs' attempted characterization of the letter
 18 which speaks for itself.

19 **Dexon's Alleged California Directed Conduct Identified Through**
 20 **Jurisdictional Discovery**

21 59. Dexon admits Plaintiffs conducted jurisdictional discovery herein, but denies the
 22 remainder of the allegations in paragraph 59 of the Complaint, including, without limitation,
 23 Plaintiffs' characterization of such jurisdictional discovery, as well as any allegation such
 24 discovery revealed any "illegal and tortious" conduct by Dexon in California or elsewhere.

25 **Dexon's Sale of Alleged Counterfeit Cisco Products to California**
 26 **Customers**

27 60. Dexon denies the allegations in paragraph 60 of the Complaint.

1 **Dexon's Sale of Alleged Counterfeit Cisco Licenses to California
2 Customers**

3 61. Dexon admits Cisco has transmitted software licenses via Product Activation Key
4 Certificates ("PAK") and that such PAKs have included a code that allows users to utilize
5 the subject software. Dexon denies the remainder of the allegations in paragraph 61 of the
6 Complaint.

7 62. Dexon denies the allegations in paragraph 62 of the Complaint.

8 63. Dexon denies the allegations in paragraph 63 of the Complaint.

9 64. Dexon denies the allegation in paragraph 64 of the Complaint.

10 **FIRST PURPORTED CLAIM FOR RELIEF
11 Federal Trademark Infringement
12 (15 U.S.C. § 1114)**

13 65. Dexon restates and incorporates by reference its responses to the allegations in
14 paragraphs 1-64 in response to the allegations in paragraph 65 of the Complaint.

15 66. Dexon denies the allegations of paragraph 66 of the Complaint.

16 67. Dexon denies the allegations of paragraph 67 of the Complaint.

17 68. Dexon denies the allegations of paragraph 68 of the Complaint.

18 69. Dexon denies the allegations of paragraph 69 of the Complaint.

19 70. Dexon denies the allegations of paragraph 70 of the Complaint.

20 71. Dexon denies the allegations of paragraph 71 of the Complaint.

21 72. Dexon denies the allegations of paragraph 72 of the Complaint.

22 **SECOND PURPORTED CLAIM FOR RELIEF
23 Federal Trademark Counterfeiting
24 (15 U.S.C. § 1114)**

25 73. Dexon restates and incorporates by reference its responses to the allegations in
26 paragraphs 1-72 in response to the allegations in paragraph 73 of the Complaint.

27 74. Dexon denies the allegations of paragraph 74 of the Complaint.

28 75. Dexon denies the allegations of paragraph 75 of the Complaint.

29 76. Dexon denies the allegations of paragraph 76 of the Complaint.

30 77. Dexon denies the allegations of paragraph 77 of the Complaint.

78. Dexon denies the allegations of paragraph 78 of the Complaint.

79. Dexon denies the allegations of paragraph 79 of the Complaint.

THIRD PURPORTED CLAIM FOR RELIEF
False Designation of Origin
(15 U.S.C. § 1125)

5 80. Dexon restates and incorporates by reference its responses to the allegations in
6 paragraphs 1-79 in response to the allegations in paragraph 80 of the Complaint.

7 | 81. Dexon denies the allegations of paragraph 81 of the Complaint

8 | 82. Dexon denies the allegations of paragraph 82 of the Complaint.

9 83. Dexon denies the allegations of paragraph 83 of the Complaint.

10 | 84. Dexon denies the allegations of paragraph 84 of the Complaint.

11 | 85. Dexon denies the allegations of paragraph 85 of the Complaint.

FOURTH PURPORTED CLAIM FOR RELIEF
California Unfair Business Practices
(Cal. Bus. & Prof. Code §§ 17200 et seq.)

14 86. Dexon restates and incorporates by reference its responses to the allegations in
15 paragraphs 1-85 in response to the allegations in paragraph 86 of the Complaint.

16 87. The allegations in paragraph 87 of the Complaint are legal conclusions of law
17 regarding California Business and Professions Code §§ 17200 et seq to which no response
18 is required. To the extent such allegations imply or suggest Dexon has in any way violated
19 California Business and Professions Code §§ 17200 et seq Dexon denies such allegations.

20 | 88. Dexon denies the allegations of paragraph 88 of the Complaint.

21 | 89. Dexon denies the allegations of paragraph 89 of the Complaint.

22 | 90. Dexon denies the allegations of paragraph 90 of the Complaint.

23 | 91. Dexon denies the allegations of paragraph 91 of the Complaint.

24 92. Dexon denies the allegations of paragraph 92 of the Complaint.

FIFTH PURPORTED CLAIM FOR RELIEF

Unjust Enrichment (Common Law)

27 93. Dexon restates and incorporates by reference its responses to the allegations in
28 paragraphs 1-92 in response to the allegations in paragraph 93 of the Complaint.

1 94. Dexon admits the allegations of paragraph 94 of the Complaint.

2 95. Dexon denies the allegations of paragraph 95 of the Complaint.

3 **AFFIRMATIVE DEFENSES**

4 Without admitting any wrongful conduct on the part of Dexon, and without
 5 admitting that Plaintiffs claims have any merit or that Plaintiffs have suffered any loss,
 6 damage, or injury, Dexon alleges the following affirmative defenses to the Complaint. By
 7 designating the following as affirmative defenses, Dexon does not in any way waive or
 8 limit any defenses which are or may be raised by their denial, allegations, and averments
 9 set forth herein. These defenses are pled in the alternative, are raised to preserve the rights
 10 of Dexon to assert such defenses, and are without prejudice to Dexon's ability to raise
 11 other and further defenses. Dexon expressly reserves all rights to reevaluate their defenses
 12 and/or assert additional defenses upon discovery and review of additional documents and
 13 information, upon the development of other pertinent facts, and during pretrial proceedings
 14 in this action. Dexon expressly incorporate all allegations of its Answer, Counterclaims
 15 and Cross-Claims as if fully set forth in each of the following affirmative defenses.

16 **FIRST AFFIRMATIVE DEFENSE**

17 **(Res Judicata and Collateral Estoppel)**

18 96. Plaintiffs' claims and/or recovery are barred, in whole or in part, by the doctrines of
 res judicata and collateral estoppel.

19 **SECOND AFFIRMATIVE DEFENSE**

20 **(Laches)**

21 97. Plaintiffs' claims and/or recovery are barred, in whole or in part, by the doctrine of
 laches. Plaintiffs' have had longstanding knowledge concerning the legal open or
 22 "secondary" market for its products and have proactively engaged in unfair and tortious
 behavior in an effort to selectively manipulate and control such secondary market to their
 23 advantage. Plaintiffs have had longstanding specific knowledge of Dexon's activity in the
 legal secondary market since well before 2011, yet have failed to take timely action to
 24 assert their claims herein, resulting in substantial prejudice to Defendants.
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THIRD AFFIRMATIVE DEFENSE

(Estoppel)

3 98. Plaintiffs' claims and/or recovery are barred, in whole or in part, by the doctrine of
4 estoppel. Plaintiffs' advertises that consumers can purchase their products from their
5 "Authorized Channel Partners" or "Authorized Resellers." Plaintiffs have known, or should
6 have known such "Authorized Channel Partners" and/or "Authorized Resellers" participate
7 in and sell their products on the secondary market. Plaintiffs have allowed these "Authorized
8 Channel Partners" and/or "Authorized Resellers" to maintain their "authorized" status
9 despite knowledge of their participation in the secondary market, including evidence of their
10 sale of counterfeit Cisco products. Plaintiffs know, or should have reasonably known, that
11 secondary market resellers such as Dexon rely upon Plaintiffs' endorsement of such
12 "authorized" vendors when sourcing Cisco products, including, without limitation,
13 procuring Cisco product from such "authorized vendors'" end customers. Plaintiffs have
14 also actively contributed to the presence of counterfeit product in the marketplace by,
15 without limitation, failing to properly police and control their manufacturers and failing to
16 properly manage their product serial numbers. As one example, Plaintiffs "authorized"
17 vendors intentionally modify or change product serial numbers in order to ensure the subject
18 product(s) qualify for Plaintiffs' SmartNet service packages. Plaintiffs are therefore
19 estopped from pursuing claims against Dexon or seeking damages related to alleged
20 counterfeit products.

FOURTH AFFIRMATIVE DEFENSE **(First Sale Doctrine and Exhaustion)**

22 99. Plaintiffs' claims and/or recovery are barred, in whole or in part, by the first sale
23 doctrine, which protects secondary market resellers such as Dexon from liability for the
24 purchase, importation, and resale of genuine Cisco products and exhausts Plaintiffs' rights
25 in further transactions.

FIFTH AFFIRMATIVE DEFENSE **(Statutes of Limitations)**

3 100. Plaintiffs' claims and/or recovery are barred, in whole or in part, by applicable
4 statutes of limitations, including but not limited to CAL. CIV. PROC. CODE §§ 337–38,
5 CAL. BUS. & PROF. CODE § 17208, and 17 U.S.C. § 507. Some or all of Plaintiffs' claims
6 involve conduct outside of the applicable statutes of limitations.

SIXTH AFFIRMATIVE DEFENSE (Waiver)

9 101. Plaintiffs' claims and/or recovery are barred, in whole or in part, by the doctrine of
10 waiver. Plaintiffs have promoted and advertised its "authorized" sellers despite having full
11 knowledge certain such "authorized" sellers: i) have been caught selling counterfeit product;
12 and ii) actively and regularly deal with secondary market resellers such as Dexon. Secondary
13 market resellers such as Dexon have understandably relied upon Plaintiffs' promotion and
14 endorsement of such "authorized" sellers when sourcing Cisco products for their customers.
15 As noted above, Plaintiffs have also intentionally failed or refused to provide or offer their
16 claimed "tools" for detecting counterfeit product to secondary market resellers such as
17 Dexon, and have actively contributed to the presence of counterfeit product in the
18 marketplace by, without limitation, failing to properly police and control their manufacturers
19 and failing to properly manage their product serial numbers. Accordingly, Plaintiffs have
20 waived any claims related to Dexon's unwitting sale of alleged counterfeit goods, including
21 any such goods sourced directly or indirectly from Plaintiffs' "authorized" vendors.

SEVENTH AFFIRMATIVE DEFENSE **(Unjust Enrichment)**

24 102. Plaintiffs' claims and/or recovery are barred, in whole or in part, by the doctrine of
25 unjust enrichment. Plaintiffs have engaged in unfair and tortious practices and made
26 misrepresentations to consumers regarding: i) the quality and authenticity of products sold
27 by secondary market resellers such as Dexon; and ii) Plaintiffs' rights to restrict consumers

1 use and transfer of Cisco hardware and software. Such conduct has improperly steered
2 customers from Dexon to Plaintiffs and unjustly enriched Plaintiffs.

EIGHTH AFFIRMATIVE DEFENSE **(Unclean Hands/Inequitable Conduct)**

5 103. Plaintiffs' claims and/or recovery are barred, in whole or in part, by the doctrines of
6 unclean hands, inequitable conduct, and similar defenses. Without limitation, Plaintiffs
7 have: (i) intentionally misled consumers into thinking that genuine products on the
8 secondary market are used, counterfeit, or stolen, (ii) sold products to resellers whom it
9 knew, or should have known, were reselling the products on the secondary market, (iii) held
10 out certain entities as "Authorized Resellers" even though Plaintiffs knew or should have
11 known these entities sold counterfeit goods, and engaged in other inequitable practices that
12 bar recovery on its claims.

NINTH AFFIRMATIVE DEFENSE **(Redundancy)**

15 104. Plaintiffs' claims and/or recovery are barred, in whole or in part, because they are
16 redundant and/or duplicative of one another.

TENTH AFFIRMATIVE DEFENSE
(Abandonment)

20 105. Plaintiffs' claims and/or recovery are barred, in whole or in part, by abandonment of
21 any marks at issue. Plaintiffs' have failed to properly police and exercise adequate quality
22 control over its marks and have thereby abandoned their rights therein.

ELEVENTH AFFIRMATIVE DEFENSE **(Conduct of Others)**

25 106. Plaintiffs' claims and/or recovery are barred, in whole or in part, because the
26 conduct complained of is the conduct of others, including, without limitation, Plaintiffs'
27 "authorized" vendors and/or Plaintiffs' licensed manufacturers.

TWELVE AFFIRMATIVE DEFENSE
(Failure to Mitigate)

107. Plaintiffs' claims and/or recovery are barred, in whole or in part, because Plaintiffs
 failed to mitigate, minimize, or attempt to avoid damages. Without limitation, Plaintiffs
 could have pursued legal remedies earlier, assisted secondary market resellers like Dexon
 in detecting and fighting counterfeit products, and/or properly policed and prevented the
 manufacture and distribution of counterfeit product within their own manufacturing and
 distribution network.

THIRTEENTH AFFIRMATIVE DEFENSIVE
(Lack of Personal Jurisdiction)

108. Plaintiffs are barred from pursuing their claims against Dexon in this Court because
 the Court lacks personal jurisdiction over Dexon.

FOURTEENTH AFFIRMATIVE DEFENSIVE
(Improper Venue)

109. Plaintiffs are barred from pursuing their claims against Dexon in this Court because
 venue is improper.

FIFTEENTH AFFIRMATIVE DEFENSIVE
(Failure to State a Claim)

110. The Complaint, in whole or in part, fails to state any claim upon which relief can be
 granted.

SIXTEENTH AFFIRMATIVE DEFENSIVE
(One Satisfaction Rule / Bar on Double Recovery)

111. Plaintiffs' claims and/or recovery are barred, in whole or in part, by the one
 satisfaction rule and/or the bar on double recoveries.

COUNTERCLAIMS

112. Counterclaim Plaintiff Dexon Computer, Inc. asserts the following counterclaims
 against Counterclaim Defendants Cisco Systems, Inc., and Cisco Technology, Inc.
 (hereinafter referred to jointly as "Cisco") alleges as follows:

THE PARTIES

2 113. Defendant and Counterclaim Plaintiff Dexon Computer, Inc. (“Dexon”) is a
3 Minnesota corporation with its principal place of business at 9201 E. Bloomington Freeway,
4 Suite BB, Bloomington, Minnesota 55420.

5 114. On information and belief, Plaintiff and Counterclaim Defendant Cisco Systems, Inc.
6 (“CSI”) is a Delaware corporation with its principal place of business at 170 W. Tasman
7 Drive, San Jose, California 95134.

8 115. On information and belief, Plaintiff and Counterclaim Defendant Cisco Technology,
9 Inc. (“CTI”) is a California corporation with its principal place of business at 170 W. Tasman
10 Drive, San Jose, California 95134.

JURISDICTION

12 116. This Court has subject matter jurisdiction over Dexon's counterclaims pursuant to 28
13 U.S.C. §§ 1367 and 1332. Dexon's counterclaims arise out of the same controversy as
14 plaintiffs' Federal claims, there is complete diversity of citizenship between Plaintiffs and
15 Dexon, and the amount in controversy exceeds seventy-five thousand dollars (\$75,000.00),
16 exclusive of interest and costs.

FACTS

The Secondary Market for Cisco Products

19 117. As with any economic activity where there are significant profits, market forces have
20 operated to create a “secondary” market for Cisco products. On information and belief,
21 authentic or genuine Cisco products come to the secondary market in the United States in a
22 variety of ways including: (a) Cisco’s knowing sale of such products to secondary market
23 suppliers in the context of either specific end user deals or when Cisco needs to move
24 inventory; (b) Cisco’s authorized resellers’ purchase of product in excess of what they need
25 for a specific end user order and subsequent resale of such product into the secondary
26 market; (c) Cisco end user’s resale of new, unused product; and (d) through importation of
27 such product from abroad where it has been sold by distributors, resellers, or end users under

1 similar circumstances. On information and belief, Cisco resists attempts by end users and
 2 resellers to return product, resulting in a natural supply of secondary market Cisco product.
 3 Given the substantial profits available from sale of Cisco-branded products, market forces
 4 dictate that a secondary market will develop for such products. These market forces
 5 benefit end users in that they reduce prices for such products.

6 118. Dexon is an independent secondary-market reseller of computer networking
 7 products, including routers, Ethernet switches and other computer hardware. Dexon
 8 provides new, refurbished and discontinued hardware products, including authentic or
 9 genuine products to its customers from leading manufacturers including, without limitation,
 10 Hewlett Packard, Dell, Juniper Networks and Cisco.

11 119. Dexon obtains Cisco products from reliable suppliers, subjects such products to
 12 extensive quality control, and then resells such products to other resellers and to end users,
 13 at a profit but frequently at prices lower than those offered by Cisco “Authorized” sellers.

14 120. Secondary market resellers of Cisco products, including Dexon, are highly
 15 incentivized to detect and stamp out the sale of counterfeit goods. While a manufacturer
 16 such as Cisco may blame rogue actors when a dissatisfied customer confronts it with a
 17 counterfeit product, an independent reseller’s own reputation suffers significantly when it
 18 sells a customer a counterfeit goods. Unsurprisingly, most independent resellers, including
 19 Dexon, take proactive steps to detect and prevent the sale of counterfeit product.

20 121. Cisco has created an “Authorized Channel Network” in which Cisco sells products
 21 to entities it refers to as “Authorized Channel Partners” or “Authorized Resellers.” Within
 22 this “Authorized” network, Cisco exerts strict control over how, and at what prices, its
 23 “Authorized” partners can buy and sell Cisco products.

24 122. “Authorized Reseller” status is not foolproof protection against counterfeit products.
 25 Cisco’s “Authorized” sellers are likewise victimized by the presence of counterfeit product
 26 in the marketplace and have been caught selling counterfeit Cisco product.

27 123. While manufacturers like Cisco are permitted to control the initial sale of their
 28 products, they may not wield trademark or copyright protections to dictate the terms by

1 which their products are resold by other parties. The well-established “first sale doctrine”
 2 protects parties who engage in the subsequent resale of Cisco’s products, even if those
 3 subsequent resales occur outside the “Authorized” channels. Cisco may not forbid the resale
 4 of its products outside the “Authorized” network.

5 **Cisco’s Improper Interference with the Secondary Market**

6 **Falsely Claiming Purchasers’ Use and Transfer is Restricted**

7 124. Cisco products, like virtually all modern electronics, contain embedded software.
 8 And just as a car, refrigerator, or cell phone will not function properly without internal
 9 software, Cisco’s products—including the Cisco products resold by Dexon—cannot
 10 function without Cisco’s embedded software.

11 125. Cisco uses the fact that its products have embedded software as an attempted end-
 12 around to the first sale doctrine. It does so by attempting to unilaterally impose purported
 13 contractual restrictions on the use and transfer of its products *after* their purchase. Namely,
 14 Cisco attempts to rely on purported “End User License Agreements” seeking to restrict the
 15 owners’ use and/or transfer of the subject hardware, including the embedded software
 16 packaged and sold with the hardware (and without which the hardware will not function).

17 126. Cisco attempts to rely on such purported “End User License Agreements” (“EULA”)
 18 despite the absence of any assent to such purported agreements/contracts by the owners of
 19 the hardware. Specifically, Cisco does not require or mandate that end users acknowledge,
 20 read, accept or provide any affirmative assent to such purported agreements/contracts before
 21 purchasing or using the Cisco goods sold by Dexon. In fact, Cisco purports to advise
 22 purchasers or end users of its alleged “End User License Agreement” by directing them to
 23 domain names or websites containing the purported EULA (i.e. www.cisco.com/go/eula;
 24 www.cisco.com/go/license)

25 127. In the event any purchasers or end users actually go to the cited domain names or
 26 websites, they are not required to provide any affirmative assent such as a “click through.”
 27 Rather, Cisco’s purported EULA states that that their “download, installation, or use of the
 28 Cisco Technology” constitutes assent. Notably, the new Cisco equipment sold on the

1 secondary market by resellers such as Dexon has never been “download[ed], install[ed] or
 2 use[d]. . .”

3 128. Cisco’s purported EULA provides or has provided that Cisco will grant a license only
 4 to consumers who purchase Cisco hardware with embedded software from a so-called
 5 “Approved Source,” defined as “Cisco or . . . [a] Cisco authorized reseller, distributor, or
 6 systems integrator[.]” Cisco warns that end users are “not licensed to Use the Software on
 7 secondhand or refurbished Cisco equipment not authorized by Cisco, or on Cisco equipment
 8 not purchased through an Approved Source.”

9 129. In other words, Cisco attempts to prevent consumers from making any use of Cisco
 10 hardware they have lawfully purchased on the secondary market by prohibiting use of the
 11 embedded software. Cisco further informs consumers that the “embedded Cisco software
 12 that runs on the hardware” is “not transferable,” and purchasers of secondary market Cisco
 13 equipment “must acquire a new license from Cisco before the software can be used.” The
 14 only way to avoid having to purchase a new license, Cisco says, is to buy refurbished
 15 equipment through Cisco’s own program.

16 130. These representations to consumers are false. Pursuant to the first sale doctrine, and
 17 absent any assent to Cisco’s purported EULA, consumers who purchase Cisco hardware
 18 may use embedded software. They may also transfer the embedded software, along with the
 19 hardware, freely. Cisco may not sidestep the first sale doctrine based on embedded software
 20 (to which the first sale doctrine indisputably applies) solely because consumers did not
 21 purchase the hardware through Cisco’s more lucrative supply chain. And it may not deceive
 22 consumers by telling them that products purchased on the secondary-market are governed
 23 by a purported EULA restricting their use and/or transfer despite the absence of any assent
 24 to such EULA.

25 131. Cisco’s misrepresentations regarding consumers’ rights to buy, use and transfer
 26 secondary-market Cisco products deters consumers from purchasing Cisco goods on the
 27 secondary market. Dexon has lost sales of products that would have been made but for
 28 Cisco’s false representations to consumers regarding their ownership rights for Cisco

1 hardware and embedded software purchased on the secondary market. These false
 2 representations have unjustly enriched Cisco at Dexon's expense.

3 132. On occasions where secondary market sellers obtain Cisco product directly from an
 4 "Authorized" seller, Cisco falsely threatens that the end users rights are restricted because
 5 the sale was contrary to the "Authorized" seller's agreement with Cisco. Cisco's
 6 enforcement of this improper policy is selective. In addition to being contrary to well-
 7 established agency principles, such alleged agreements between Cisco and its "Authorized"
 8 sellers are often not properly renewed or maintained and are therefore not in force and effect.

9 Falsely Labeling New Secondary Market Products "Used"

10 133. Cisco also falsely labels genuine, lawfully obtained Cisco products as "used," simply
 11 because such products were traded on the secondary market. As a result, end users or
 12 resellers who communicate with Cisco about the status of certain Cisco products are
 13 deliberately provided with misinformation.

14 134. Cisco's contortion of the term "used" is particularly egregious. Rather than give the
 15 term its ordinary meaning, Cisco has unilaterally decided that "used equipment" means
 16 "previously owned equipment that is now owned by a party other than the original
 17 customer," including both "opened and unopened equipment." Cisco's form letters from its
 18 Brand Protection Team have and continue to direct secondary market customers, including
 19 Dexon's customers, to domains and websites (i.e. www.cisco.com/go/relicensing) which
 20 misleadingly inform or have informed such customers that all products purchased on the
 21 secondary market are "used." Such site defines or has defined "used" as "previously owned
 22 equipment that is now owned by a party other than the original customer" including both
 23 "opened and unopened equipment."

24 135. Accordingly, Cisco routinely publicly criticizes and labels secondary market product
 25 which has never been used – including product contained in unopened sealed boxes – as
 26 "used" contrary to consumers' well understood meaning of such term.

27 136. Cisco knows that its unilateral definition of the term "used" is contrary to the common
 28 consumer understanding, and that consumers are misled by its use of the term.

Cisco's Tortious Efforts to Interfere with Dexon's Business

137. Because Cisco regards secondary market resellers like Dexon as a threat to its excess
 3 profits, Cisco spends substantial money and effort to attack secondary market participants
 4 such as Dexon and to chill reseller and end user participation in the secondary market. These
 5 steps include but are not limited to employing a team of “Brand Protection” employees
 6 whose primary responsibility is to intervene with resellers and end users in cases where they
 7 are either contemplating the purchase of product, or have ordered product, from the
 8 secondary market. Brand Protection personnel use a variety of tools to disrupt secondary
 9 market sales, including: (i) advising resellers and end users that product from the secondary
 10 market is suspect, may damage or jeopardize their network operations, may void Cisco
 11 warranties, may be counterfeit, and is otherwise unreliable.

138. Such tortious conduct includes, without limitation, falsely advising Dexon’s actual
 13 and prospective customers that: i) Dexon does not sell new but rather “used” Cisco product;
 14 ii) Dexon’s products are “counterfeit” solely because they were sold on the secondary market
 15 despite the fact such products are in fact genuine; iii) Dexon products violate a purported
 16 EULA despite the absence of any assent to such EULA and/or despite the fact the relevant
 17 product (i.e. phones) require no license.

139. Cisco has presented, published, and/or caused to be published the false and
 19 misleading message that alleged “genuine” and/or “new” Cisco gear only comes from Cisco
 20 and its “Authorized” sellers.

140. Cisco has engaged in a pattern and practice of this tortious conduct with the intent to
 22 disrupt contracts between Dexon and its customers, pending opportunities with such
 23 customers, future business with such customers, and even with the apparent goal of driving
 24 Dexon out of business altogether.

141. As a direct result of Cisco’s tortious interference, Dexon has suffered significant
 26 damages, including the cancellation of numerous pending orders, loss of opportunity to bid
 27 on projects, and the loss of entire relationships with many of its top customers.

28

Count I
Lanham Act False Advertising
(15 U.S.C. § 1125(a)(1)(B))

3 142. Dexon repeats and realleges each of the allegations set forth in the preceding
4 paragraphs as if fully set forth herein.

5 143. Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), provides that it is unlawful
6 for any person to use a “false or misleading description of fact, or false or misleading
7 representation of fact, which . . . in commercial advertising or promotion, misrepresents the
8 nature, characteristics, qualities, or geographic origin of his or her or another person’s goods,
9 services, or commercial activities.”

10 144. As set forth above, Cisco has published in commercial advertising and promotion,
11 and continues to publish in commercial advertising and promotion, false or misleading
12 representations of fact regarding the software embedded in Cisco hardware sold on the
13 secondary market.

14 145. In addition, Cisco has published in commercial advertising and promotion, and
15 continues to publish in commercial advertising and promotion, false or misleading
16 representations of fact regarding whether products in the secondary market are “used.”

17 146. Without limitation, on or about July 9, 2019, Sean O'Brien, a member of Cisco's
18 Brand Protection Team, sent a letter to Dexon customer Fort Bend Independent School
19 District. Fort Bend Independent School District had previously entered into a written
20 contract with Dexon for the purchase of over \$1,300,000.00 in new Cisco equipment. Such
21 letter stated: "According to Cisco Systems' records (www.cisco.com/go/eula, the Cisco
22 goods listed in Exhibit A are not recorded as being sold to Fort Bend Independent School
23 District through one of Cisco's authorized resellers. It appears you may have purchased the
24 Cisco goods from a company name **Dexon Computer**. **Unfortunately, Dexon Computers**
25 **is not a member of the Cisco authorize reseller program.** As such, Cisco recommends
26 that you return these goods for a refund, along with any other Cisco products received by
27 the vendor, and replace the items with authorized Cisco products sold via an authorized
28 reseller."

1 147. Such letter further warned Dexon's customer that such products "may not come with
 2 a valid software license" and that "Customers purchasing most Cisco goods outside of
 3 Cisco's authorized sales channels would not automatically have a license to use the
 4 software."

5 148. In addition to falsely advising Dexon's customer it would not have a license to use
 6 products purchased from Dexon, such letter referred Dexon's customer to
 7 www.cisco.com/go/relicensing containing the false and misleading definition of "used."

8 149. As a direct result of the July 9, 2019 correspondence, as well as other communications
 9 with Cisco's Brand Protection Team, Fort Bend Independent School District falsely believed
 10 the Cisco equipment purchased from Dexon was "used" and/or that it would lack a necessary
 11 license to use such equipment. As a result, Fort Bend Independent School District cancelled
 12 its contract with Dexon.

13 150. Without limitation, on or about March 14, 2019, Tim Casto, a member of Cisco's
 14 Brand Protection Team, sent a letter to Dexon customer Lockridge Grindal and Nauen
 15 ("Lockridge"). Such letter falsely advised Dexon customer Lockridge that "six switches"
 16 purchased from Dexon were "counterfeit."

17 151. The March 14, 2019 letter warned that "Dexon is NOT a member of the Cisco
 18 Authorized Reseller Program" and that "[r]egardless of what Dexon claims, and regardless
 19 of whether its Cisco product is used or is in new sealed boxes, ANY Cisco product it supplies
 20 is consider unauthorized." Such letter falsely represented that absolutely no product
 21 obtained from Dexon comes with a "valid software license."

22 152. In addition to falsely labeling "six switches" obtained from Dexon counterfeit and
 23 falsely stating that no products obtained from Dexon came with a "valid software license,"
 24 such letter also referred Dexon customer Lockridge to the domain or website containing the
 25 false and misleading definition of "used."

26 153. As a direct result of the March 14, 2019 correspondence, as well as other
 27 communications with Cisco's Brand Protection Team, Lockridge falsely believed all six
 28

1 switches it purchased from Dexon were counterfeit and/or that it would not have the required
 2 licenses necessary to use Cisco product purchased from Dexon.

3 154. Without limitation, on or about , January 27, 2020, Tim Casto, a member of Cisco’s
 4 Brand Protection Team, sent an email to Dexon customer Accuray Inc. (“Accuray”). Such
 5 email acknowledged that products purchased by Accuray from Dexon had been determined
 6 to be authentic or “genuine.” However, the email falsely stated that because such genuine
 7 products were purchased on the secondary market, they “did not have a valid software
 8 license.” The email stated in relevant part, “Cisco reviewed the console readout and
 9 determined that the items are genuine. . .The below items, however, show as sold to end
 10 users other than Accuray. This means that the below products do not have a valid software
 11 license. . .”

12 155. Without limitation, on or about July 12, 2021, Shuting Li, on information and belief
 13 a member of Cisco’s Brand Protection Team, sent an email to Dexon customer Meadowridge
 14 Networks, Inc. (“Meadowridge”). Such letter falsely implied product purchased from
 15 Dexon was not new or not genuine. The email stated, “Serial number is verified to be an
 16 unauthorized unit is because this unit is now in possession of end customer which is different
 17 from the reported end customer. So it is an overseas diversion unit.”

18 156. As a direct result of the July 12, 2021 email, as well as other communications with
 19 Cisco, Meadowridge understandably understood Cisco to be claiming the products
 20 purchased from Dexon to be “used” and/or counterfeit. In a responsive email, Meadowridge
 21 explained, “I am the first end-user to open the box. . .This came to me in an unopened Cisco
 22 box and was not a ‘used’ unit in any sense of the word. . .I had every reason to think that
 23 this was a legitimate unit and no reason to believe that it wasn’t.”

24 157. Rather than clarify Meadowridge’s interpretation and misunderstanding of its prior
 25 communications, Cisco responded by directing Meadowridge to a domain or website
 26 containing its false and misleading definition of “used.”

27

28

1 158. The foregoing false and misleading representations of fact were designed to mislead
 2 consumers, and have in fact misled consumers, at the expense of Dexon, causing direct and
 3 substantial loss and damage to Dexon.

4 159. The foregoing false and misleading representations of fact are made willfully and
 5 entitle Dexon to recover the profits obtained by Cisco thereby, in addition to Dexon's own
 6 damages suffered as a result of Cisco's false and misleading representations of fact.

7 160. Cisco's misrepresentations have caused, and unless enjoined by this Court, will
 8 continue to cause irreparable injury to Dexon.

9 **Count II**

10 **Intentional Interference with Contractual Relations**

11 161. Dexon repeats and realleges each of the allegations set forth in the preceding
 12 paragraphs as if fully set forth herein.

13 162. Dexon secured contracts with certain customers, including, without limitation, Fort
 14 Bend Independent School District, Lockridge, Meadowridge and Accuray for the sale of
 15 Cisco products on which Dexon would have earned significant profits.

16 163. On information and belief, Cisco knew or should have known of these contractual
 17 relationships between Dexon and these third party customers.

18 164. On information and belief, Cisco intentionally, or with reckless disregard for the
 19 truth, made false and misleading statements about Dexon and the products it sells to these
 20 customers in order to disrupt the contractual relationship and to cause these customers to
 21 purchase product from Cisco authorized resellers at a higher price.

22 165. Cisco's statements in fact disrupted these contractual relationships between Dexon
 23 and its customers.

24 166. Dexon has suffered substantial economic damage as a result of this wrongful conduct
 25 in an amount subject to proof at trial.

26 167. Cisco's actions have caused, and unless enjoined by this Court, will continue to cause
 27 irreparable injury to Dexon.

Count III

Intentional Interference with Prospective Economic Advantage

168. Dexon repeats and realleges each of the allegations set forth in the preceding
paragraphs as if fully set forth herein.

169. An economic relationship existed between Dexon and its actual and prospective
customers, including, without limitation, Fort Bend Independent School District, Lockridge,
Meadowridge, and Accuray, each of which contained the probability of substantial future
economic benefits to Dexon.

170. On information and belief, Cisco knew or should have known of these relationships.

171. On information and belief, Cisco intentionally, or with reckless disregard, engaged
in tortious conduct designed to disrupt Dexon's potential benefit from these relationships.

172. Cisco's statements were made with the intent to disrupt the economic relationship
between Dexon and its potential and actual customers in order to damage Dexon and/or
divert business to "Cisco Authorized Resellers" under Cisco's control.

173. As a result of the efforts detailed above, Dexon's relationships with its potential and
actual customers have in fact been permanently disrupted and/or materially damaged in a
significant number of instances, including its future relationships. As a result of Cisco's
tortious efforts, Dexon's customers have refused to pay for certain Cisco goods, have
returned and/or cancelled orders for such goods, have removed Dexon's bids from
contention for business, and have ceased doing business with Dexon on other products
and/or altogether.

174. Dexon has suffered substantial economic damage as a result of this wrongful conduct
in an amount subject to proof at trial.

175. Cisco's actions have caused, and unless enjoined by this Court, will continue to cause
irreparable injury to Dexon.

Count IV Trade Libel

3 176. Dexon repeats and realleges each of the allegations set forth in the preceding
4 paragraphs as if fully set forth herein.

5 177. On information and belief, Dexon alleges that Cisco has repeatedly made disparaging
6 statements about Dexon's products as detailed herein, including, without limitation, the
7 statements and representations detailed above to Dexon customers Fort Bend Independent
8 School District, Lockridge, Meadowridge and Accuray.

9 178. Cisco's statements disparaged Dexon's products. On information and belief, Dexon
10 alleges that the claims made were false or materially misleading.

11 179. Dexon has suffered and will continue to suffer irreparable harm should Cisco's trade
12 libel be allowed to continue.

13 180. As a proximate result of Cisco's statements, prospective and actual customers have
14 been deterred from buying Dexon's products and from otherwise dealing with Dexon. Dexon
15 has suffered substantial economic damage as a result of this wrongful conduct in an amount
16 subject to proof at trial.

THIRD PARTY CLAIMS

18 181. Third Party Plaintiff Dexon Computer, Inc. asserts the following claims against Third
19 Party Defendants Atlantix Global Systems International, LLC, Bizcom Electronics, Inc.,
20 Digi Devices Online, Enterprise Business Technologies, Inc., Fiber Cable Connections,
21 MJSI, Multimode Technologies, LLC, Optimum Data, Inc., Paragon, Pure Future
22 Technology, Inc., Seastar IT Trading LLC, Server Tech Supply, Softnetworks, Inc., Strada
23 Networks, LLC, Unlimited Network Solutions and Wisecom Technologies alleges as
24 follows:

THE PARTIES

26 182. Third Party Plaintiff Dexon Computer, Inc. (“Dexon”) is a Minnesota corporation
27 with its principal place of business at 9201 E. Bloomington Freeway, Suite BB,
28 Bloomington, Minnesota 55420.

1 183. On information and belief, Third Party Defendant Atlantix Global Systems
 2 International, LLC is a Georgia limited liability corporation with its principal place of
 3 business in Georgia.

4 184. On information and belief, Third Party Defendant Bizcom Electronics, Inc., is a
 5 California corporation with its principal place of business in California.

6 185. On information and belief, Third Party Defendant Digi Devices Online is a foreign
 7 corporation with its principal U.S. place of business in Texas.

8 186. On information and belief, Third Party Defendant Enterprise Business Technologies,
 9 Inc. is a New York corporation with its principal place of business in New York.

10 187. On information and belief, Third Party Defendant Fiber Cable Connections is a
 11 Washington corporation with its principal place of business in Washington.

12 188. On information and belief, Third Party Defendant MJSI is a California corporation
 13 with its principal place of business in California.

14 189. On information and belief, Third Party Defendant Multimode Technologies, LLC is
 15 a Minnesota limited liability company with its principal place of business in Minnesota.

16 190. On information and belief, Third Party Defendant Opitimum Data, Inc. is a Nebraska
 17 corporation with its principal place of business in Nebraska.

18 191. On information and belief, Third Party Defendant Paragon is a Massachusetts
 19 corporation with its principal place of business in Massachusetts.

20 192. On information and belief, Third Party Defendant Pure Future Technology, Inc. is a
 21 California corporation with its principal place of business in California.

22 193. On information and belief, Third Party Defendant Seastar IT Trading LLC is a
 23 Washington limited liability company with its principal place of business in Washington.

24 194. On information and belief, Third Party Defendant Server Tech Supply is a Virginia
 25 corporation with its principal place of business in Pennsylvania.

26 195. On information and belief, Third Party Defendant Softnetworks, Inc. is a New Jersey
 27 limited liability company with its principal place of business in New Jersey.

28

1 196. On information and belief, Third Party Defendant Strada Networks, LLC is a foreign
 2 limited liability company with its principal place of business in British Columbia, Canada.
 3 197. On information and belief, Third Party Defendant Teksavers is a Texas corporation
 4 with its principal place of business in Texas
 5 198. On information and belief, Third Party Defendant Unlimited Network Solutions is a
 6 corporation with its principal place of business in California.
 7 199. On information and belief, Wisecom Technologies is a corporation with its principal
 8 place of business in Maryland.

9 **Supply of Alleged Counterfeit and Infringing Product**

10 200. The Third Party Defendants are all reputable dealers and merchants with respect to
 11 the Cisco products alleged to be counterfeit and thereby infringing herein (“allegedly
 12 infringing Cisco product”).
 13 201. Dexon obtained such allegedly infringing Cisco product from the Third Party
 14 Defendants. While Dexon denies Cisco’s allegations and believes the subject products to be
 15 genuine, Dexon relied in good faith on the Third Party Defendants in procuring or obtaining
 16 such products.
 17 202. Without limitation, the Third Party Defendants warranted that such products sold to
 18 Dexon would be "delivered free of the rightful claim of any third person by way of
 19 infringement or the like." See U.C.C. §2-312(3).

20
 21 **FIRST THIRD PARTY CLAIM**
 22 **(Indemnification - All Third Party Defendants)**

23 203. Dexon repeats and realleges each of the allegations set forth in the preceding
 24 paragraphs as if fully set forth herein.
 25 204. Dexon was named in this litigation as a direct result of product procured from and/or
 26 supplied by the Third Party Defendants.
 27 205. Third Party Defendants should be ordered to indemnify Dexon whether based on
 28 express agreement, implied agreement or common law.

SECOND THIRD PARTY CLAIM
(Contribution - All Third Party Defendants)

206. Dexon repeats and realleges each of the allegations set forth in the preceding
 paragraphs as if fully set forth herein.

207. Dexon was named in this litigation as a direct result of product procured from and
 supplied by the Third Party Defendants.

208. Dexon is entitled to contribution from Third Party Defendants, whether based on
 express agreement, implied agreement or common law, to pay or defray any judgment
 entered against Dexon herein.

PRAAYER FOR RELIEF

WHEREFORE, Defendant, Counterclaim Plaintiff and Third Party Plaintiff Dexon Computer, Inc. prays for judgment and relief against Plaintiffs and Counterclaim Defendants Cisco Systems, Inc. and Cisco Technology, Inc. (“Cisco”) and Third Party Defendants Atlantix Global Systems International, LLC, Bizcom Electronics, Inc., Digi Devices Online, Enterprise Business Technologies, Inc., Fiber Cable Connections, MJSI, Multimode Technologies, LLC, Optimum Data, Inc., Paragon, Pure Future Technology, Inc., Seastar IT Trading LLC, Server Tech Supply, Softnetworks, Inc., Strada Networks, LLC, Unlimited Network Solutions and Wisecom Technologies as follows:

- a. Dismissing Plaintiffs’ Cisco Systems, Inc. and Cisco Technology, Inc. claims with prejudice, together with costs and disbursements;
- b. Awarding Dexon actual damages, subject to proof at trial but in an amount in excess of \$75,000.;
- c. For equitable remedial efforts by Counterclaim Defendants sufficient to rehabilitate Dexon’s damaged reputation;
- d. For orders restraining or enjoining Cisco from engaging in similar conduct in the future;
- e. Awarding Dexon damages, lost profits, and treble damages pursuant to the Lanham Act;

- 1 f. Awarding Dexon its costs and expenses of litigation, including reasonable
- 2 attorneys' fees;
- 3 g. An award in Dexon's favor against Third Party Defendants sufficient to
- 4 compensate Dexon for all economic loss, damages, attorney's fees and costs
- 5 resulting from the claims herein; and
- 6 h. Such other and further relief as this Court deems just and equitable.

7
8 Dated: January 10, 2022

/s/ Amanda R. Washton

9 Amanda Washton

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